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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/699,971

11/03/2003

Jamie Crawford

5434-8

5019

27799

7590

02/20/2008

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EXAMINER

MACNEILL, ELIZABETH

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

02/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,971	<b>Applicant(s)</b> CRAWFORD ET AL.	
	<b>Examiner</b> ELIZABETH R. MACNEILL	<b>Art Unit</b> 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,6-15,17-25,27-33,37-41 and 43-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-15,17-25,27-33,37-41 and 43-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 25 October 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6-15, 17, 21, 23-25, 29, 30, 32, 33, 37-41, and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asbaghi (US 6,884,237) in view of Berthier (US 5,429,612).

Asbaghi teaches a barrel (12), spring (38) and cover (14) assembly which may be used with a syringe (Fig 6). The shield includes an entry track (distal of lock 48, pin 40a is in the entry track at Fig 3A); a lock-out track having a first end (end of section 46) and a second end (end of section 44) which extend beyond the intersection of the entry and lockout tracks (at lock 48), and a pin (40a-b) which slides in the tracks from a first position (Fig 3A) to a second position (Fig 3C) against the urging of the spring to a third

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position (Fig 3E) by the urging of the spring. As to claim 2,7,8, 33, 38, 45-47 see resilient arm 48 which prevents the pin from re-entering the entry track. As to claim 9, see locking device 52a-b, Fig 4.

Asbaghi does not teach that the pin is on a resilient lever arm.

Berthier discloses a barrel 7, cannula 6, plunger 5, shield 8, urging member 20, pin 26 on a lever arm and one-way step 27. See Figures 1-3. Berthier also shows an entry track 23 and a lockout track 25/28. Berthier also shows lock 29 to prevent moving the pin out of the third position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the lockout track and resilient pin of Berthier with the sliding shield arrangement of Asbaghi since it has been held that improving similar devices in the same way is within the skill of an ordinary worker in the art.

As to **claims 14, 40** Asbaghi teaches that the entry track is straight and that the lock out track is curved around the barrel. It would have been obvious to use a curved entry track and a straight lockout track as a matter of obvious design choice since the device would function in the same manner and the change does not solve a stated problem.

3. Claims 18, 19, 22, 27, 28, and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Asbaghi in view of Berthier.

It is well known in the art to use glass or plastic as a material for a syringe barrel. It would have been within the skill of one of ordinary skill in the art to use glass or plastic as the material for the syringe barrel as a matter of obvious design choice.

***Response to Arguments***

4. Applicant's arguments are moot in view of the new grounds of rejection. At page 15 of the response, applicant indicated that Asbaghi did not have a lever arm but provided no reasoning as to the obviousness of combining a lever arm with the shield.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MACNEILL whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767